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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

11 IN RE: HIGH-TECH EMPLOYEE
12 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

13 THIS DOCUMENT RELATES TO:

**DEFENDANTS' JOINT
ADMINISTRATIVE MOTION TO SEAL**

14 ALL ACTIONS

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Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants hereby jointly move to seal the following:

- (i) portions of Defendants' Joint Administrative Motion for Leave to Supplement the Record in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification ("Motion for Leave to Supplement") (proposed redacted version attached hereto as Exhibit A);
- (ii) portions of Exhibit A to the Declaration of Eric Evans in Support of Defendants' Motion for Leave to Supplement ("Evans Declaration"), which are transcript excerpts from the deposition of Professor Kevin M. Murphy dated December 3, 2012 (proposed redacted version attached hereto as Exhibit B);
- (iii) portions of the Supplemental Declaration of Professor Kevin M. Murphy in Support of Defendants' Motion for Leave to Supplement ("Murphy Supplemental Declaration") (proposed redacted version attached hereto as Exhibit C); and
- (iv) Exhibit A (in its entirety) to the Murphy Supplemental Declaration.

This information has been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Defendants are filing corresponding declarations in support of the respective sealing requests.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has "carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion," where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana*

1 *v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“[A] ‘particularized showing’
 2 under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of
 3 sealed discovery material attached to nondispositive motions.”); *see also Pintos v. Pacific*
 4 *Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest in
 5 nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them
 6 under seal.”).

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8 **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS’ CONFIDENTIAL**
INFORMATION

9 The redacted portions of Defendants’ Motion for Leave to Supplement, Exhibit A to the
 10 Evans Declaration, the Supplemental Murphy Declaration, and Exhibit A to the Supplemental
 11 Murphy Declaration contain confidential and commercially sensitive information about
 12 employee compensation, including Defendants’ compensation data as well as information that
 13 reflects certain Defendants’ internal decision-making regarding their business strategies related
 14 to compensation and internal assessments of their and other employers’ competitive position in
 15 the labor market. Defendants also seek to keep under seal those materials that reflect
 16 compensation practices, strategies and policies; recruiting and hiring data, practices, strategies
 17 and policies; and personal identifying information of employees or candidates. Defendants
 18 designated the foregoing information “Confidential” or “Attorneys Eyes Only” under the
 19 Protective Order.

20 As the accompanying declarations demonstrate, Defendants keep the sealed information
 21 confidential and the public disclosure of this information would cause each Defendant harm by
 22 giving third-parties (including individuals responsible for competitive decision-making) insights
 23 into confidential and sensitive aspects of each of the Defendants’ strategies, competitive
 24 positions, and business operations, allowing these third-parties to potentially gain an unfair
 25 advantage in dealings with and against each of the Defendants. A significant portion of the
 26 sealed information is employee compensation data. This type of information is regularly sealed
 27 because of its confidential and private nature. *See Renfro v. Unum, et al.*, No. 09-2661, 2010 BL
 28 104197 (N.D. Cal. May 10, 2010) (granting a motion to seal records containing plaintiffs’ salary

1 information); *Nettles v. Farmers Ins. Exch.*, No. C06-5164, 2007 WL 858060, at *2, 2007 BL
 2 247444 (W.D. Wash. Mar. 16, 2007) (holding that salary review notices for third parties “who
 3 have not chosen to have their salary history placed into the public record” could be sealed.);
 4 *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010 U.S. Dist. LEXIS 82526, at n.1, 2010 BL 187807
 5 (W.D. Okla. Aug. 09, 2012) (noting that portions of summary judgment materials were filed
 6 under seal because they contained “confidential salary information”).

7 Similarly, compensation policies, practices and decisions are routinely subject to a
 8 sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*, No. C 07-01841, at
 9 *16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09, 2008) (noting that a
 10 “compensation policy” was filed under seal); *Hertz Equip. Rental Co. v. Useda*, No. CV-10-
 11 4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order
 12 to enjoin a former employee from using a company’s “confidential and/or trade secret employee
 13 compensation information”).

14 In addition, good causes exists to seal confidential information relating to a company’s
 15 internal business, recruiting or hiring practices, strategies and policies, including confidential
 16 analyses of a company’s market position. *See Fed. R. Civ. Proc. 26(c)(1)(G)* (permitting sealing
 17 of “a trade secret or other confidential research, development, or commercial information”);
 18 *Krieger v. Atheros Commc’ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at
 19 *3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its
 20 investment adviser that contained “sensitive and confidential information, including long-term
 21 financial projections, discussions of business strategy, and competitive analyses”); *Network
 22 Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,
 23 at *9 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business
 24 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,
 25 Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at *9 (D. Ariz.
 26 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”
 27 reason standard applicable to dispositive motions, including a “spreadsheet tracking information
 28 regarding potentially competitive products,” and other business strategy documents, such as

1 information relating to “product competitiveness, and market and technological opportunities
 2 and risks”).

3 Additionally, good cause exists to seal information pertaining to Defendants’ recruiting
 4 policies and practices that are proprietary business methods and/or trade secrets. This
 5 confidential and commercially sensitive business information is non-public and should remain
 6 confidential under Rule 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential
 7 research, development, or commercial information”); *see also* Cal. Civ. Code § 3426.1(d)
 8 (defining trade secrets as information that “(1) Derives independent economic value, actual or
 9 potential, from not being generally known to the public or to other persons who can obtain
 10 economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable
 11 under the circumstances to maintain its secrecy.”).

12 Good cause also exists for sealing the identities and personal contact information of
 13 specific employees or applicants that are contained in the Motion or accompanying materials.
 14 These employees or applicants have not sought to make their identities known or placed in the
 15 public record. *Nettles* at *2 (holding that the interests of private parties outweighed the public’s
 16 right of access with respect to information pertaining to third party salary and employment
 17 separation information).

18 **III. CONCLUSION**

19 For the foregoing reasons, Defendants respectfully request that this Court order portions
 20 of Defendants’ Motion for Leave to Supplement, portions of Exhibit A to the Evans Declaration,
 21 portions of the Supplemental Murphy Declaration, and Exhibit A (in its entirety) to the
 22 Supplemental Murphy Declaration to remain under seal.

23 In accordance with Civil Local Rule 79-5(d), a proposed order granting Defendants’ Joint
 24 Administrative Motion to Seal has been lodged with the Clerk in hard copy and served on
 25 counsel for Plaintiffs. In accordance with Civil Local Rule 79-5(d), Defendants’ proposed
 26 redacted versions of Defendants’ Motion for Leave to Supplement, Exhibit A to the Evans
 27 Declaration, the Supplemental Murphy Declaration, and Exhibit A to the Supplemental Murphy
 28 Declaration are being lodged with the Clerk in hard copy within a sealed envelope.

1 Dated: January 9, 2013

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8 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in
9 the filing of this document has been obtained from all signatories.